

PT 95-12

Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use
Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

OLD TOWN SCHOOL OF FOLK MUSIC)
 Applicant) Docket No.: 92-16-1527
) Parcel Index Nos.: 14-32-407-090-000
) and 14-32-408-027-000
)
)
v.)
)
DEPARTMENT OF REVENUE) Barbara S. Rowe
OF THE STATE OF ILLINOIS) Administrative Law Judge
)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Patrick J. Cullerton, Attorney for Applicant

SYNOPSIS: The Cook County Board of Appeals filed a Statement of Facts in Exemption Application with the Illinois Department of Revenue (the Department) for Old Town School of Folk Music (the applicant). The Department denied the application finding the property not in exempt ownership and use. The applicant filed a protest and requested a hearing. The hearing was held. It is recommended that the Director of the Department find that the parcel herein issue was not in exempt ownership and use for the taxable year in question.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Cook County permanent parcel index numbers 14-32-407-090-000 and 14-32-408-027-000 were not in exempt ownership and use during the 1992 assessment year was established by admission into evidence of Department's Exhibits 1 through 6(d).

2. The applicant submitted a Board of Appeals - Statement of Facts in Exemption Application to the Cook County Board of Appeals. On July 2,

1993, the Cook County Board of Appeals recommended that this exemption be denied finding no exempt use. The application was received by the Department on July 14, 1993 (Department's Exhibit 2).

3. On April 15, 1994, the Department denied the exemption finding:

THE PRIMARY USE OF THE PROPERTY IS NOT CHARITABLE.

THE PRIMARY USE OF THE PROPERTY IS NOT EDUCATIONAL.

THE PROPERTY IS NOT IN EXEMPT OWNERSHIP.

APPLICANT IS NOT A SCHOOL WITHIN THE GENERAL SCHEME OF PUBLIC EDUCATION.

APPLICANT IS NOT ORGANIZED FOR CHARITABLE PURPOSES (Department's Exhibit 3).

4. On April 25, 1994, the applicant requested a hearing in this matter (Department's Exhibit 4).

5. On August 24, 1994, the Department issued a Notice of Pre-Hearing Conference for a conference scheduled by agreement of the parties for August 31, 1994. The pre-hearing conference took place as scheduled (Department's Exhibit 5).

6. On September 6, 1994, the Department issued a Notice of Hearing for a hearing scheduled on October 12, 1994 at 1:30 p.m. at the James R. Thompson Center, Chicago, Illinois. The hearing was held pursuant to that notice (Department's Exhibit 6).

7. The applicant acquired the parcels herein issue by warranty deeds dated May 27, 1968 and April 10, 1990 (Department's Exhibit 2(c)).

8. The Applicant is incorporated under the Illinois General Not For Profit Corporation Act. The Articles of Incorporation for applicant state that the purpose is:

To do all things deemed necessary in the organization and management of a school of music, with particular emphasis on the teaching and studying of folk music; to coach, teach and instruct folk music and the playing of musical instruments, and for educational (not including the operation of a post-secondary educational institution as defined by the statutes of this State), civic and literary purposes in general (Department's Exhibit 2(d)).

9. The applicant was granted a 501(c)(3) exemption from the payment of federal income tax in October, 1962 by the Internal Revenue Service (Department's Exhibit 2(j)).

10. Applicant owns two buildings located on the parcel index numbers herein question. They consist of a 15,000 square foot, two-story building at 909 West Armitage and an 8,000 square foot, four-story building at 939 West Armitage.

11. The 909 West Armitage address houses the administrative offices for the applicant, a 300 seat concert hall, a museum-resource center and the Different Strummer Music store.

12. The 939 West Armitage building has two floors of classroom and teaching space and two floors containing tenants (Department's Exhibit 2 (f)).

13. Applicant leases the fourth floor of the building at the 939 West Armitage address as an apartment for a monthly rent of \$900.00 (Department's Exhibit 2(m)). The floor is 85.35 feet by 25 feet (Department's Exhibit 2(i)).

14. The applicant leases the first floor of the 939 West Armitage building as a paint and wallpaper store for a monthly rental of \$1,430.00 in 1990 with an annual yearly increase not to exceed 6 percent of the gross lease per year (Department's Exhibit 2(n)). The floor is 85.35 feet by 25 feet (Department's Exhibit 2(i)). The applicant also leased the basement to the store for the period August 1, 1991 to July 31, 1992 for an increased rent in the amount of \$1,689.00 for August 1, 1991 to February 14, 1992 and \$1,789.00 for February 15, 1992 to July 31, 1992 (Department's Exhibit 2(n)).

15. The applicant operates a retail music store on the first floor of the building at 909 West Armitage. The music store takes up approximately 6.5 percent of the first floor. The storage area used by the music store in

the basement of the building is approximately 4.14 percent of the basement area (Department's Exhibit 2(0), Transcript (Tr.) 34-36).

16. The Balance Sheet of February 28, 1993 listed assets and liabilities in the amount of \$1,141,284.47. Applicants operating revenues for the month ending February 28, 1993 came from: tuition-\$54,834.00; total fundraising-\$23,740.00; total sales-\$2,558.34; total events-\$23,030.35; income from Different Strummer-\$24,392.89; discounts D.S.-(\$1,388.24); total other income-\$20,523.77; for net operating revenues of \$147,692.10. The General Administrative Expenses were: total salaries-\$58,767.78; total benefits-\$7968.43; total instructional program-\$4316,82; total fundraising expense \$486.00; total sales expense-\$560.42; total events expense-\$14,938.51; museum expense-\$160.00; total operating expense-\$23,022.98; total real estate expense-\$9,018.49; cost of merchandise D.S.-\$14,116.02; inventory variation D.S.-(\$446.91); other expenses-Different Strummer-\$5,016.29; total other expenses-\$2,925.00; contributed goods and services-\$140.00 for total general and administrative expenses of \$140989.83 giving a net profit of \$6702.27 for the month (Department's Exhibit 2(L)). A similar balance sheet was not submitted for the taxable year in question.

17. Applicant's Annual Report for 1992 shows a total of 2,634 adult group students enrolled, 2,388 children group students enrolled and 16,254 adult/children's private lessons given. The total attendance at 1992 concerts was 18,634. The financial/facility area of the report states:

The growth shown throughout this report was mirrored in our end-of-year position. Gross revenue for 1992 was \$1,553,500 as compared to \$1,232,400 for 1991. Tuition accounted for \$550,000, fundraising for \$325,000, and events for \$225,000. Our music store and other income sources accounted for the balance. Expenses totaled \$1,545,900 with salaries and benefits of administrators and teachers accounting for \$700,000 (Applicant's Exhibit 8, Tr. 40-41).

18. The applicant testified that:

The Old Town School derives its revenue from tuition charged to parents, children, and adults that take instructional classes at

the school; from concert ticket revenue; from what we call unearned revenue, which includes foundation, corporate, government grants, individual contributions, sponsorships, and in-kind gifts; and then the revenue from our retail operations. Those are the sources of revenue for the school (Tr. 40).

19. Applicant has various scholarships for group classes for students who are not financially able to afford applicant's programs (Tr. 66). The Scholarship Policy states that applications are to be reviewed by the Scholarship Committee and that the financial need, commitment, desire, previous experience and willingness of the applicant to cover some of the cost and/or work as a volunteer of the applicant is the criteria for a scholarship. The applicant acknowledges that the federal government guidelines for poverty fall considerably below the cost of living and encourage those at higher levels of income to apply (Department's Exhibit 2(k)). The applicant testified that since tracking scholarship vouchers which was begun in 1993; 500 vouchers had been distributed with a face value in excess of \$47,000 (Tr. 66). No one who requested a scholarship for the group classes in 1992 was refused (Tr. 72). The scholarship program does not include private lessons (Tr. 75). The applicant provides some scholarship students with free instruments from the music store (Tr. 74).

20. Group teachers are paid based on the length of the class. If the class lasts for an hour the compensation is \$25.00; for 90 minutes, \$35.00; and \$40.00 for two hours (Tr. 41). Private instructors are compensated either at \$60.40 per hour or \$16.40 per-hour (Tr. 41).

21. The applicant receives contributions from foundations and corporations, governmental bodies, businesses and individuals. Applicant testified that by nature, most of the programs would lose money if not supported by outside sources (Applicant's Exhibit 8, Tr. 42-43).

22. Income from concerts and tuition revenue makes up 70 percent of applicant's annual operating budget (Tr. 41). Applicant testified that

they often waive ticket price and give excess tickets to school children when a show is not going to be sold out (Tr. 43). Applicant testified that there was no written policy to waive concert ticket price dependent upon need. If seats were available they would rather see the seats filled because the cost to the applicant would be the same (Tr. 50).

23. Applicant has a written rental policy for use of its space (Tr. 53).

24. Applicant's contention that their factual situation is very similar to the exemptions granted by the Department in Dorolyn Academy of Music, Docket No. 90-16-869, the Conservatory of Central Illinois, Docket No. 86-10-93, and Sherwood Conservatory of Music, Docket No. 85-16-203 (Applicant's Post-Hearing Exhibit 1) was not upheld by the facts. Applicant testified that they advised the Sherwood Conservatory of Music regarding the development of the children's curriculum (Tr. 45).

25. The applicant charges admission to the three different series of concerts that they hold each year (Tr. 48). Applicant also gives a number of performances that are open and free to anyone who wants to come to the school after school hours. The performances are given by the teachers and students in the school that evening (Tr. 49).

26. Applicant testified that they had an accreditation through Cortland State University at one time but that program is no longer in existence and that they do not feel the need to be accredited (Tr. 55-56).

27. The applicant has an in-school residency program wherein they choose about 24 public school each year to send artists to provide programming for children who have little or no music in the school (Tr. 81-85). The applicant also tries to coordinate free events with the concerts that they bring to the area (Tr. 94-97).

28. A witness for the applicant testified that the members of the Board of Directors of the applicant are not compensated (Tr. 90).

29. The application listed the parcel index numbers in question as 14-32-407-085 and 14-32-408-027 (Department's Exhibit 2). The information submitted by the applicant's attorney after the hearing stated that parcel index number 14-32-407-085 was eliminated in 1992 and replaced by Parcel Index Numbers 14-32-407-090 and 14-32-407-089. The applicant owns the property assigned Parcel Index Number 14-32-407-090 (Post-Hearing Exhibit 1).

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled, ...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

In *Crerar v. Williams*, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them

to establish themselves for life, or by erecting or maintaining public government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in nature.

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
 - (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
 - (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
 - (4) Charity is dispensed to all who need and apply for it;
 - (5) No obstacles are placed in the way of those seeking the benefits;
- and
- (6) The primary use of the property is for charitable purposes.

I find that the applicant does not qualify as a charitable organization under the guidelines above. The applicant had excess revenues over expenses in 1992 in the amount of \$7,600.00. The applicant testified that 70 percent of its funds came from tuition and concert revenues. The funds are not derived mainly from public and private charity.

The scholarship policy applies only to the group lessons that the applicant provides and not to private lessons. There are no provisions for waiver of fees for people who cannot afford tickets for the concerts. Although applicant does have a policy of giving away tickets when they are not sold, there are obstacles placed in the way of persons seeking benefits from the applicant.

It is recommended that the Director of the Department find that Cook County permanent parcel index numbers 14-32-407-090-000 and 14-32-408-027-000 were not in exempt ownership and use for the taxable year in question.

It is therefore recommended that Cook County permanent parcel index numbers 14- 32-407-090-000 and 14-32-408-027-000 remain on the tax rolls for the 1992 assessment year.